

DEPARTMENT OF TRANSPORTATION DBE PROGRAM – 49CFR PART 26

SAMPLE DBE PROGRAM

The Department of Transportation (DOT) has prepared this sample program to help recipients comply with 49 CFR Part 26, the DOT DBE rule. We published Part 26 in the Federal Register on February 2, 1999, and it became effective March 4 (64 F.R. 5096). It made extensive revisions to DOT's DBE program, formerly administered under 49 CFR Part 23.

This sample program supersedes guidance issued by the operating administrations under former part 23. It does not address the separate DBE program for airport concessionaires, which continues to be administered in accordance with 49 CFR Part 23.

We are providing this sample DBE program for informational purposes, and recipients are not required to use it or its format. However, recipients may wish to use it as a guide in preparing their program documents. Recipients may customize the sample program to fit their circumstances. The three DOT operating administrations with DBE program responsibilities – the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA) – may provide additional guidance for program matters that are specific to their programs. This sample program should, however, lead to greater consistency among recipients' submissions.

At a number of points, the sample program refers to provisions of part 26. Recipients may quote referenced portions of the rule in their program if they wish, but they are not required to do so. The sample program also provides language for some documents that are part of the program (e.g., policy statements, contract clauses). Except where otherwise noted, recipients are not required to use this language, and may use their own language as long as it meets regulatory requirements.

In the sample program, we have put instructions and notes in italics. Recipients would not put this italicized material into their program documents.

You may obtain an electronic version of this document, the DBE regulations themselves, and other DOT guidance from DOT's DBE website:

<http://osdbu.dot.gov/programs/dbe/dbe.htm>

The General Counsel of the Department of Transportation has reviewed this sample program and approved it as consistent with the language and intent of 49 CFR part 26.

SAMPLE DBE PROGRAM

Definitions of Terms

The terms used in this program have the meanings defined in 49 CFR §26.5.

Objectives /Policy Statement (§§26.1, 26.23)

The *[Name of Recipient]* has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The *[Name of Recipient]* has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the *[Name of Recipient]* has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the *[Name of Recipient]* to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy –

To ensure nondiscrimination in the award and administration of DOT assisted contracts;
 To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
 To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
 To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
 To help remove barriers to the participation of DBEs in DOT assisted contracts; and
 To assist the development of firms that can compete successfully in the market place outside the DBE Program.

[Name or title of appropriate person or office] has been delegated as the DBE Liaison Officer. In that capacity, *[Name or title]* is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the *[Name of Recipient]* in its financial assistance agreements with the Department of Transportation.

[Name of Recipient] has disseminated this policy statement to the *[identify the governing board or officials of the recipient]* and all the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts *[Specify how this distribution is accomplished]*.

[Signature of Recipient's Chief Executive Officer] Date: _____

Nondiscrimination. (§26.7)

[Name of Recipient] will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the *[Name of Recipient]* will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

DBE Program Updates (§26.21)

We will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Quotas (§26.43)

We do not use quotas in any way in the administration of this DBE program.

DBE Liaison Officer (DBELO) (§26.45)

We have designated the following individual as our DBE Liaison Officer: *[Provide name, address, telephone number, and e-mail address]* In that capacity, *[Name of DBELO]* is responsible for implementing all aspects of the DBE program and ensuring that the *[Name of Recipient]* complies with all provisions of 49 CFR Part 26. *[Name of DBELO]* has direct, independent access to the *[indicate chief executive officer of recipient]* concerning DBE program matters. *[Specify resources available to the DBELO; e.g. The DBELO has a staff of 2 professional employees assigned to the DBE program on a full-time basis and two support personnel who devote a portion of their time to the program.]*

An organization chart displaying the DBELO's position in the organization is found in Attachment ____ to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination other appropriate officials. Duties and responsibilities include the following *[Note: This list is a sample -- tailor to your organization]*.

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. *Identifies contracts and procurements so that DBE goals are included in solicitations*

(both race-neutral methods and contract specific goals) and monitors results.

6. Analyzes *[Name of Recipient]*'s progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee
10. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in *[name of State]*.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the *[Name of Recipient]*'s updated directory on certified DBEs

[Note: List responsibilities of other personnel responsible for DBE Program implementation].

Federal Financial Assistance Agreement Assurance (§26.13)

[Name of Recipient] has signed the following assurance, applicable to all DOT-assisted contracts and their administration: *[Note – if the recipient has subrecipients, the program must state that this language will appear in financial assistance agreements with subrecipients.]*

[Name of Recipient] shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the *[Name of Recipient]* of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

[Note – this language is to be used verbatim, as it is stated in §26.13(a).]

DBE Financial Institutions

It is the policy of the *[Name of Recipient]* to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. We have made the following efforts to identify and use such institutions: *[specify]*. To date we have identified the following such institutions: *[list]*

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

Directory (§26.25)

The *[Name of Recipient]* maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. We revise the Directory *[state interval: must be at least annually]*. We make the Directory available as follows *[list address, phone, number, website, or other means by which interested persons can obtain access to the Directory]*. The Directory may be found in Attachment ____ to this program document.

[Note that all recipients are required to participate in a combined statewide directory when the Uniform Certification Program becomes operational. At that time, this portion of the program will state how interested persons can obtain access to this combined directory.]

Overconcentration (§26.33)

[Note: It is necessary to have a program element addressing this subject only if a recipient has identified overconcentration in one or more types of work. If a recipient has such a program element, it would describe the rationale for having the program element, the specific provisions of the element (e.g., what is the overconcentration that has been identified, how does the program element work), and how interested persons would obtain information about the program element. If there is not an overconcentration element in the program, there should be a sentence to the effect that the recipient has not identified overconcentration.]

Business Development Programs (§26.35)

[Note: It is necessary to have a program element addressing this subject only if a recipient has decided, for any reason, to have a business development or mentor-protégé program. If a recipient has such a program element, it would describe the rationale for having the program element, the specific provisions of the element (e.g., who is eligible to participate, how does the program element work), and how interested persons would obtain information about the program element.))]

Required Contract Clauses (§§26.13, 26.29)

Contract Assurance

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

[Note –This language is to be used verbatim, as it is stated in §26.13(b).]

Prompt Payment

We will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than *[specify number]* days from the receipt of each payment the prime contractor receives from *[Name of recipient]*. The prime contractor agrees further to return retainage payments to each subcontractor within *[specify same number as above]* days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the *[Name of Recipient]*. This clause applies to both DBE and non-DBE subcontractors.

[Note – This is sample language, and recipients can use existing prompt payment clauses or draft their own, as long as they meet the substantive requirements of §26.29. This portion of the program must also state what sanctions/consequences the recipient attaches to noncompliance with the prompt payment clause and the procedures through which they are enforced. In addition, this portion of the program may also include other prompt payment-related provisions, such as an alternative dispute resolution mechanism that the recipient chooses to use.]

Monitoring and Enforcement Mechanisms (§26.37)

[In this portion of the program, the recipient should set forth the specific means it will use to ensure compliance with part 26 requirements by all participants and those of your DBE program.]

We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

Attachment ____ lists the regulations, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.

Overall Goals (§26.45)

[Note – To make the program as useful as possible to the public, we recommend that the "amount," "method," and "breakout" portions of this section of the program be updated annually. Unless the recipient's method changes, these program updates would not need to be submitted to DOT for DBE program purposes. The material on overall goals in the DBE program will be a shorter summary of the material submitted annually in the overall goal submission.]

Amount of goal

[Name of Recipient]'s overall goal for FY 20__ is the following: ____ % of the Federal financial assistance we will expend in DOT-assisted contracts. [FTA recipients add (exclusive of FTA funds to be used for the purchase of transit vehicles).]

[Note – This statement of the overall goal is intended for information of public users of the program, and does not imply that DOT, as such, approves the goal when it approves the program. If a recipient is setting an overall goal on a project basis rather than on an annual basis, it could use the following alternative language]

[Name of Recipient]'s overall goal for the following time period (20__ - 20__) is the following: ____ % of the Federal financial assistance we will expend in DOT-assisted contracts. [FTA recipients add (exclusive of FTA funds to be used for the purchase of transit vehicles).]

Given the amount of DOT-assisted contracts *[Name of Recipient]* expects to let during this fiscal year/project], which is \$_____, this means that we have set a goal of expending \$ _____ with DBEs during this fiscal year/project.

Method

The following is a summary of the method we used to calculate this goal:

[Note – This summary need not be as extensive as the actual overall goal submission, which is a separate document. It should address the following points:

- *The method used to calculate the relative availability of DBEs ("base figure") for "Step 1" of the process (see §26.45(c)). The base figure is a percentage figure calculated by dividing a number representing available DBEs by a number representing all available firms. For example, the program would state which of Examples 1-4 from §26.45 (or which variation or alternative approach) the recipient is using.*
- *The data source(s) used to derive the numerator and denominator in the calculation (e.g., , for a recipient that used Example 1, there were X DBEs in our Directory and Y total firms in the following SIC codes and following Counties found in the Census Bureau's CBP database).*
- *The relative availability percentage.*
- *The data sources used in implementing "Step 2" (see §26.45(d)). This step is intended to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. For example, this portion of the program could "Our history of DBE achievements was __%, our disparity study showed that availability of DBEs was ____ %, we have the following summarized information about barriers to entry or competitiveness of DBEs in our programs from the following sources").*
- *From this data, we have adjusted our base percentage as follows:
[Describe reasoning process that led to your particular adjustment from the Step 2 data you have]*

Transit Vehicle Manufacturers (§26.49)

[Note – this element generally applies only to FTA recipients' programs. If an FAA or FHWA recipient uses this approach to purchases of equipment, it would add a similar element to its program.]

[Name of Recipient] will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, *[Name of Recipient]* may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Process

[Name of Recipient] submits its overall goal to DOT on August 1 of each year *[except September 1, 1999, and in cases where an FTA or FAA recipient submits a project goal]*.

Before establishing the overall goal each year, *[Name of Recipient]* will consult with *[Note – Program should identify the persons or groups with whom this consultation normally occurs, without limiting consultation to these persons or groups.]* to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the *[Name of Recipient's]* efforts to establish a level playing field for the participation of DBEs.

[Note –

The consultation should include, but not necessarily be limited to, minority, women's and general contractor groups, community organizations, and other officials or organizations.]

Following this consultation, we will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and DOT will accept comments on the goals for 45 days from the date of the notice. *[Program should state the media in which this notice issued; e.g., newspapers, available minority-focus media, trade publications, websites.]* Normally, we will issue this notice by June 1 of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT *[or, if the goal is established on a project basis, by the time of the first solicitation for a DOT-assisted contract for the project]*.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

[Name of Recipient] will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The *[Name of Recipient]* uses the following race-neutral means to increase DBE participation: *[See §26.51(b) for examples – list the things that you actually do.]*

We estimate that, in meeting our overall goal of __%, we will obtain __% from race-neutral participation and __ % through race-conscious measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious DBE participation: *[summarize how the estimate was derived; e.g., from private sector MBE/WBE participation, DBE participation of DBEs in local procurement*

programs in which there are no DBE contract goals, extent of your race-neutral business assistance efforts].

We will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see §26.51(f)) and we will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Contract Goals (§26.51)

[Name of Recipient] will use contract goals to meet any portion of the overall goal *[Name of Recipient]* does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work)

We will express our contract goals as a percentage of [the total amount of a DOT-assisted contract] or [the Federal share of a DOT-assisted contract]. *[Note – recipients can choose either approach; program should mention which choice the recipient made].*

[If the recipient intends to use any race-conscious means of obtaining DBE participation other than contract goals, it should describe them here.]

Good Faith Efforts (§26.53)

Information to be submitted

[Name of Recipient] treats bidder/offers' compliance with good faith efforts requirements as a matter of [responsiveness] or [responsibility]. *[Note -Recipients can choose either approach; program should mention which choice the recipient made].*

Each solicitation for which a contract goal has been established will require the bidders/offers to submit the following information *[State the time when bidder/offers must submit the information, which will depend on whether you have chosen the*

responsiveness or responsibility approach.]

The names and addresses of DBE firms that will participate in the contract;
 A description of the work that each DBE will perform;
 The dollar amount of the participation of each DBE firm participation
 Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
 Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
 If the contract goal is not met, evidence of good faith efforts.

Demonstration of good faith efforts

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to part 26.

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as [responsive, responsible]: *[Name individuals or committee who performs this function.]*

We will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Administrative reconsideration

Within ____ days of being informed by *[name of recipient]* that it is not [responsive, responsible] because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: *[provide name, address, phone number, e-mail address]*. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

The result of the reconsideration process is not administratively appealable to the Department of Transportation.

[Note - If there are more detailed reconsideration procedures, the recipient can include them here or in an attachment referenced here.]

Good Faith Efforts when a DBE is replaced on a contract

We will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. *[Note – Include the administrative remedies you will use for noncompliance (see §26.53(f)(3)). The following two sentences are examples of such remedies.]* If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Counting DBE Participation (§26.55)

We will count DBE participation toward overall and contract goals as provided in 49 CFR §26.55.

Certification (§§26.61 – 26.91)

[Name of Recipient] will use the certification standards of Subpart D of part 26 and the certification procedures of Subpart E of part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions decision based on the facts as a whole.

Process

Our certification application form and documentation requirements are found in Attachment ____ to this program.

For information about the certification process or to apply for certification, firms should contact: *[provide name, address, phone number, and e-mail of contact person]*.

In the event we propose to remove a DBE's certification, we will follow procedures consistent with §26.87. Attachment ____ to this program sets forth these procedures in detail. *[Note – Recipients should create and append such a procedural attachment.]* To ensure separation of functions in a decertification, we have determined that *[name of*

official or office] will serve as the decisionmaker in decertification proceedings. We have established an administrative "firewall" to ensure that *[same official or office named in previous sentence]* will not have participated in any way in the decertification proceeding against the firm (including in the decision to initiate such a proceeding).

If we deny a firm's application or decertify it, it may not reapply until *[select number of months up to 12]* have passed from our action.

Unified Certification Program

[Note – If your state already has a unified certification program in which you participate, please describe it here. Otherwise, your program should note what steps you have taken and are taking to help create a UCP in your state (e.g., what discussions there have been with other recipients). This is also the place in your program for you to describe certification reciprocity or coordination mechanisms that exist with other recipients (e.g., a regional certification consortium).]

Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation
Office of Civil Rights
Certification Appeals Branch
400 7th St., SW, Room 2104
Washington, DC 20590

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

[If recipient has a system for administrative appeals of certification decisions, it should mention it here and provide details of the procedure in an Attachment. The program should inform the public that resort to this system is not a remedy a firm need exhaust before making a certification appeal to DOT under §26.89].

"Recertifications"

We will review the eligibility of DBEs that we certified under former part 23, to make sure that they meet the standards of Subpart D of part 26. We will complete this review no later than three years from the most recent certification date of each firm. *[Note – Recipient should include its schedule for this review process. This schedule need not name the review date for each firm, but should include milestones; e.g., our {number} most active firms by {date}; our {number} next most active firms by {date}, etc.]*

For firms that we have certified or reviewed and found eligible under part 26, we will again review their eligibility *[state interval at which you intend such reviews. Part 26 says you may not conduct such reviews more often than every three years, but you are not required to conduct them at any specific interval.]* These reviews will include the following components *[list elements of review; e.g., will an on-site review or a filling out a new application be mandated, or will recipient make these determinations on a case-by-case basis?]*

"No Change" Affidavits and Notices of Change

We require all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR part 26 or of any material changes in the information provided with *[name of DBE]*'s application for certification.

We also require all owners of all DBEs we have certified to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of §26.83(j).

The text of this affidavit is the following: *[this is sample language consistent with the regulatory provision. You may substitute other language consistent with the rule]:*

I swear (or affirm) that there have been no changes in the circumstances of *[name of DBE firm]* affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with *[name of DBE]*'s application for certification, except for any changes about which you have provided written notice to the *[Name of Recipient]* under §26.83(i). *[Name of firm]* meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$16.6 million.

We require DBEs to submit with this affidavit documentation of the firm's size and gross receipts.

We will notify all currently certified DBE firms of these obligations *[program should state how and when]*. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

Personal Net Worth

We will require all disadvantaged owners of applicants and of currently-certified DBEs whose eligibility under part 26 we review, to submit a statement of personal net worth. *[Program should state timing of this requirement. Obtaining a PNW statement would necessarily be part of processing new applications or recertifications. Otherwise, DOT guidance does not require recipients to obtain this information before the part 26 certification review of the firm.]*

Attachment ____ sets forth our personal net worth form *[Note -this form should not exceed in scope and detail the SBA's 2-page form]* and the documentation respondents must submit with it *[Note - Documentation must not be unduly burdensome, lengthy, or intrusive]*.

Information Collection and Reporting

Bidders List

The *[Name of Recipient]* will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

We will collect this information in the following ways:

[Program should indicate the methods the recipient will use to obtain this information. The regulation does not mandate a particular method. Options include, but are not limited to, a contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts; a recipient-directed survey of a statistically sound sample of firms on a name/ address list to get age/size information; a notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report information directly to the recipient, etc.]

Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the *[Name of Recipient]* or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

We will perform interim audits of contract payments to DBEs. The audit will review

payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

Reporting to DOT

We will report DBE participation to DOT as follows:

[FAA Recipients] – We will submit annually DOT Form 4630, as modified for use by FAA recipients.

[FTA Recipients] – We will report DBE participation on a quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT assisted contracts.

[FHWA Recipients] - We will report DBE participation on a quarterly basis, using DOT Form 4630.

Confidentiality

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law [program should summarize applicable state and local law, such as state FOIA laws and how they apply]. Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Attachments

[List and append; we recommend that a copy of part 26 be attached to the program so that public users to whom we send copies can have it handy]

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